

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

THOMAS MASCARENA,

Plaintiff,

vs.

DAVID BERKEBILE, Warden-Crossroads
Correctional Center; BRANDY
SHERRARD, Classification Coordinator;
CAMILLE WANDLER, Unit Manager;
TIMOTHY ALLRED-Board of Pardons and
Parole; Officer BURDITT-Institutional
Probation and Parole Office; MIKE
BATISTA, Director-Department of
Corrections; KARL KINYON, D.O.C.
Contract Monitor; STATE OF MONTANA,
et al.,

Defendants.

CV 15-00050-GF-BMM-JTJ

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Plaintiffs Jeremiah Worm, Kal Kenfield, Jeremy Seminole, and Thomas Mascarena signed and filed a single Motion to Proceed Without Paying the Filing Fee, a proposed Complaint, and a proposed order to show cause for a preliminary injunction and temporary restraining order. (Civil Action 15cv31-GF-BMM-JTJ, Docs. 1, 2, 2-1.) Plaintiffs were all inmates at Crossroads Correctional Center (Crossroads) when they submitted the Complaint. They are proceeding without counsel.

On June 16, 2015, the undersigned issued an Order severing the Plaintiffs' claims into four cases and requiring each Plaintiff to either file his own motion to proceed in forma pauperis or pay the \$400.00 filing fee on or before July 10, 2015. In addition, the undersigned found that the Complaint, as currently plead, failed to state a claim upon which relief could be granted and was therefore subject to dismissal. Because some of the defects in the Complaint might have been cured by the allegation of additional facts, the undersigned gave Plaintiffs an opportunity to file an amended complaint on or before July 24, 2015. (Doc. 1.)

Plaintiffs were specifically advised that the Court could dismiss this action if they failed to timely comply with every provision of the Court's Order. (Doc. 1 at 23, *citing Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (court may dismiss an action for failure to comply with any order of the court)). Mr. Mascarena did not respond to the Court's Order, did not pay the filing fee, did not submit a motion to proceed in forma pauperis, and did not submit an amended complaint. Thus, the Court issues the following:

RECOMMENDATIONS

1. This matter should be dismissed for failure to comply with the Court's Order of June 16, 2015 (Doc. 1).
2. The Clerk of Court should be directed to close this matter and enter

judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Mascarena may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a) should not be filed until entry of the District Court's final judgment.

DATED this 24th day of August, 2015.

/s/ John Johnston
John Johnston
United States Magistrate Judge

¹ As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.